

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Michael Romell Kirtley**
Docket No. **278315**
L.C. No. **04-006185-01**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),
orders:

The claim of appeal from the October 7, 2004 judgment of sentence is DISMISSED for lack of jurisdiction. The Wayne Circuit Court, Criminal Division did not have the authority under MCR 6.428, which allows the reissuance of a judgment of sentence when the ineffective assistance of an attorney, whether appointed or retained, prevents a criminal defendant from perfecting a timely appeal of right, to reinstate appellant's appellate rights since the circuit court had already filed a timely claim of appeal on appellant's behalf in Docket No. 259084 and any alleged ineffective assistance occurred after this filing. See MCR 6.425(G)(3), 7.202(6)(b)(ii), 7.203(A)(1), and 7.204(A)(2)(a). If the attorney appointed to pursue postjudgment relief on appellant's behalf had wanted to challenge the alleged ineffective assistance of the appellate attorney in Docket No. 259084, the proper methodology would have been to file a motion for relief from judgment under MCR 6.500 *et seq.* See MCR 6.501.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL - 3 2007

Date

Sandra Schultz Mengel
Chief Clerk